

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

v.

0.48 ACRE OF LAND, MORE OR LESS,
SITUATE IN CAMERON COUNTY, TEXAS,
AND ESTATE OF LUCIANO ORTIZ, *et al.*,
Defendants.

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CIVIL ACTION NO. 1:08-cv-00196

**JOINT STIPULATION AND MOTION FOR ORDER ESTABLISHING JUST
COMPENSATION, GRANTING POSSESSION, DISBURSING FUNDS ON DEPOSIT IN
THE REGISTRY OF THE COURT, AND CLOSING CASE**

1. On May 28, 2008, pursuant to the Declaration of Taking Act (40 U.S.C. § 3114), and Federal Rule of Civil Procedure 71.1, the United States filed a Complaint in Condemnation¹ and a Declaration of Taking² to acquire a fee interest in a 0.48 acre tract of land, identified as tract RGV-BRP-1007, for purposes of the border infrastructure project.³

2. On June 11, 2008, the United States deposited the estimated just compensation of \$8,400.00 into the registry of the Court for the taking of Tract RGV-BRP-1007.⁴ On July 1, 2008, the Court issued an order granting the United States' Motion for Order of Possession as to Tract RGV-BRP-1007.⁵

3. On May 6, 2010, the United States filed an Amendment to Complaint in

¹ Dkt. No. 1.

² Dkt. No. 2.

³ Schedules "C," "D," & "E," Dkt. Nos. 1-1 at 2-6; 2-1 at 6-10.

⁴ Dkt. No. 4 at 1. The filing of the Declaration of Taking and deposit of estimated just compensation immediately vested title in the United States to Tract RGV-BRP-1007. *See* 40 U.S.C. § 3114(b)(1). Thus, June 11, 2008 is hereafter referred to as the "date of taking."

⁵ Dkt. Nos. 5 & 6.

Condemnation⁶ (“Amended Complaint”) and Amendment to Declaration of Taking⁷ (“ADT”) to clarify the legal description of Tract RGV-BRP-1007 as 0.5016 acre of land (instead of 0.48 acre of land) as being the total acreage taken; to clarify the accompanying plat to accurately reflect the results of final survey of Tract RGV-BRP-1007; and to clarify the estate taken in Tract RGV-BRP-1007.⁸

4. On May 20, 2021, the United States appeared before the Court for a Status Conference on this matter. At the Status Conference, the Court determined that Defendants Herbert Timothy Frazier, Cheryl A. Frazier Williams, and Carolyn L. Frazier, Independent Executrix of the Estate of Robert D. Frazier (collectively, hereafter “Party Defendants”) are the sole landowner Defendants entitled to just compensation for the taking of Tract RGV-BRP-1007.⁹

5. The United States and the undersigned Party Defendants now make this stipulation and motion for entry of an Order (1) establishing eight thousand, four hundred and 00/100 dollars (\$8,400.00), plus accrued interest, as the total just compensation for the fee interest taken, described in Schedule “EE” of the Amended Complaint¹⁰ and ADT¹¹; (2) disbursing the stipulated just compensation, as directed below, from the funds on deposit in the Registry of the Court; and (3) closing this case on the Court’s docket. As grounds for this motion, the parties jointly state that:

- a. The United States and the undersigned Party Defendants confirm and agree that the full and just compensation payable to them by the United States for the taking of the Subject

⁶ Dkt. No. 11.

⁷ Dkt. No. 12.

⁸ Dkt. Nos. 11 at 2, ¶¶ 5-6; 12 at 2, ¶¶ (1)-(3).

⁹ See 05/20/2021 Ct. Minute Entry.

¹⁰ Dkt. No. 11.

¹¹ Dkt. No. 12.

Property shall be their proportionate share of the sum of eight thousand, four hundred and 00/100 dollars (\$8,400.00) plus any accrued interest earned thereon while on deposit, which sum is all inclusive and in full satisfaction of any claims of whatsoever nature by the undersigned Party Defendants against the United States for the institution and prosecution of the above-captioned action.

- b. The United States and the undersigned Party Defendants now respectfully request that final judgment be entered against the United States as to those Defendants in the amount of eight thousand four hundred and no/100 dollars (\$8,400.00) for the taking of the Subject Property, along with any accrued interest.
- c. On June 11, 2008, the United States deposited a check in the amount of eight thousand, four hundred and 00/100 dollars (\$8,400.00) into the Registry of the Court as the total estimated just compensation for the taking of the Subject Property. The United States and the undersigned Party Defendants agree that title to the Subject Property vested in the United States by operation of law.
- d. On July 1, 2008, the Court granted the United States immediate possession and use of the Subject Property.¹² At this time, the Parties request that the United States be found entitled to immediate possession of the estate condemned in Schedule “EE” of the Amended Complaint and ADT to the extent not previously granted by the Court in Tract RGV-BRP-1007¹³, and order that any persons/entity surrender same to the United States.
- e. The Clerk of the Court shall, without further order of the Court, disburse the total sum of **eight thousand, four hundred and 00/100 dollars (\$8,400.00)**, out of the funds on deposit

¹² Dkt. Nos. 5 & 6.

¹³ See Schedule “EE,” Dkt. Nos. 11 & 12.

with the Registry of the Court, which remains on deposit in the Court's Registry, along with any accrued interest earned thereon while on deposit, to be disbursed as follows:

- 1) **\$2,800.00** shall be payable by check to **Herbert Timothy Frazier**, with accrued interest from date of deposit.
 - 2) **\$2,800.00** shall be payable by check to **Cheryl A. Frazier Williams**, with accrued interest from date of deposit.
 - 3) **\$2,800.00** shall be payable by check to **Carolyn L. Frazier**, with accrued interest from date of deposit.
- f. The Party Defendants warrant they were the owners of the Subject Property taken in this proceeding on the date of taking; (b) they have the exclusive right to the compensation, herein; excepting the interests of parties having liens, leases, encumbrances of record, and unpaid taxes and assessments, if any; and (c) that no other party is entitled to the same or any part thereof by reason of any unrecorded agreement.
- g. In the event that any other party is ultimately determined by a court of competent jurisdiction to have any right to receive compensation for the interest in the property taken in this proceeding, Party Defendants shall refund into the Registry of the Court the compensation distributed herein, or such part thereof as the Court may direct, with interest thereon at an annual rate provided in 40 U.S.C. § 3116 from the date of receipt of the respective deposit by Party Defendants, to the date of repayment into the Registry of the Court.
- h. Party Defendants shall be responsible for their own legal fees, costs, and expenses, including attorney fees, consultant fees, and any other expenses or costs.

- i. There being no outstanding taxes or assessments due or owing, Party Defendants are responsible for the payment of any additional taxes or assessments which they otherwise owe on the interest in the property taken in this proceeding on the date of taking.
- j. Party Defendants shall take no appeal from any rulings or judgments made by the Court in this action, and the parties consent to the entry of all motions, orders, and judgments necessary to effectuate this stipulated judgment.
- k. Party Defendants shall save and hold harmless the United States from all claims or liability resulting from any unrecorded leases or agreements affecting the interest in the property taken in this proceeding on the date of taking.
- l. This joint stipulation and motion is binding on the heirs, trustees, executors, administrators, devisees, successors, assigns, agents, and representatives of Party Defendants.
- m. The parties request that the Court enter an order closing this case on the Court's docket.

AGREED AS TO FORM AND SUBSTANCE:

FOR DEFENDANTS:


HERBERT TIMOTHY FRAZIER

Grapevine, TX
Defendant

CHERYL A. FRAZIER WILLIAMS

Seguin, TX
Defendant

CAROLYN L. FRAZIER
*Independent Executrix of the
Estate of Robert D. Frazier*

Fort Worth, TX
Defendant

FOR PLAINTIFF:

JENNIFER B. LOWERY
Acting United States Attorney
Southern District of Texas

By:

BALTAZAR SALAZAR
Assistant United States Attorney
S.D. Tex. No. 3135288
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Brownsville, Texas 78520
Tel: (956) 983-6057
Fax: (956) 548-2775
Email: Baltazar.Salazar@usdoj.gov
Attorney-in-Charge for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that he served a true and correct copy of the foregoing Joint Stipulation and Motion for Order Establishing Just Compensation, Granting Possession, Disbursing Funds on Deposit in the Registry of the Court, and Closing Case on all parties in this case via email and regular mail on July 1, 2021.

By: s/Baltazar Salazar
Baltazar Salazar
Assistant United States Attorney

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Baltazar Salazar
Assistant United States Attorney

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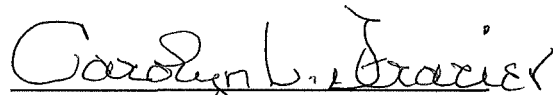
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